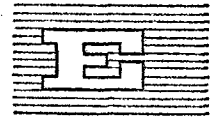


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COMMISSION ON HUMAN RIGHTS
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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO
ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:
QUESTION OF MISSING AND DISAPPEARED PERSONS

Report by the Secretary-General prepared in accordance
with resolution 18 (XXXIII) of the Sub-Commission on
Prevention of Discrimination and Protection of
Minorities

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I. REPLIES RECEIVED FROM GOVERNMENTS (continued) 1/

FEDERAL REPUBLIC OF GERMANY

[Original: English]

[4 February 1981]

The Federal Government welcomes the fact that in resolution 18 (XXXIII) the Sub-Commission on Prevention of Discrimination and Protection of Minorities takes up the cause of missing persons whose enforced or involuntary disappearance is a serious violation of human rights. It is particularly disturbing that the number of disappeared persons, mainly political opponents it would seem, is increasing in certain States and that their whereabouts or fate cannot be determined.

The special situation in those States cannot be compared with conditions in other countries, especially the Federal Republic of Germany, where that type of problem does not exist. The Federal Republic of Germany is a State based on the rule of law where legislation is subject to the constitutional order and the executive and the judiciary are bound by law and justice (Article 20 (3) of the Basic Law). Basic rights, including the right to life, inviolability of the person, and liberty of the individual (Article 2 (2) of the Basic Law) bind the legislature, the executive and the judiciary as directly enforceable law (Article 1 (3) of the Basic Law). If these or other rights of an individual are violated by public authority, recourse to the court is open to him under the constitution (Article 19 (4) of the Basic Law). Should the regular forms of legal redress be exhausted, the person claiming that one of his basic rights has been violated may file a complaint of unconstitutionality with the Federal Constitutional Court (Article 93 (4a) of the Basic Law). The independence of judges is guaranteed under the constitution (Article 97 (1) of the Basic Law).

Effective guarantees exist especially in the event of deprivation of liberty. The liberty of the individual may be restricted only by virtue of a formal law and only with due regard to the forms described therein; detained persons may not be subjected to mental nor to physical ill-treatment (Article 104 (1) of the Basic Law).

Only judges may decide on the admissibility or continuation of any deprivation of liberty. Where such deprivation is not based on the order of a judge, a judicial decision must be obtained without delay. The police may hold no one on their own authority in custody longer than the end of the day after the day of apprehension (Article 104 (2) of the Basic Law).

These guarantees also apply in an emergency situation with the sole exception that during a state of defence, if no judge is able to act within the period applying in normal times; the period within which an arrested person must be brought before a judge may be extended by federal legislation to a period not exceeding four days (Article 115 c (2) (2) of the Basic Law).

In the event that an individual's right to freedom is threatened not by public authorities but by a third party, federal penal law seeks to ensure his protection by providing for the imposition of high penalties for kidnapping and abduction (Articles 239, 239 a, 239 b of the Penal Code). These penalties also apply to officials acting outside their legal competence.

1/ In accordance with editorial directives issued by the Economic and Social Council, notably in resolution 1979/41, and endorsed by the General Assembly, the contents of the replies have been slightly summarized. The full texts are on file in the Secretariat and are available to any member of the Commission who may wish to consult them.

Furthermore, all officials are fully responsible under penal law and disciplinary regulations for the legality and constitutionality of their actions. Authorities and officials are subject to the checks and controls of public opinion since freedom of the press is guaranteed (Article 5 (1) of the Basic Law).

The effective functioning of the aforementioned guarantees and of the over-all legal and constitutional system of the Federal Republic of Germany is one of the main reasons why the question of disappeared persons has never been a phenomenon in the Federal Republic of Germany requiring specific measures for the protection of human rights. Hence, in view of this situation, the Federal Government is unable to contribute towards most of the issues raised in resolution 18 (XXXIII).

ITALY

[Original: French]

[9 February 1981]

1. Italian law guarantees in the fullest and most comprehensive manner that police authorities shall not carry out illegal arrests (even in the form of "enforced or involuntary disappearances") and punishes in an adequate manner any excesses in respect of **arrested** or detained persons.

Article 13 of the Constitution would appear fundamental in this context. After solemnly proclaiming that personal liberty is inviolable (in the first paragraph), this article provides that no form of restriction of personal liberty is permitted except by a duly authorized act of the judicial authorities and then only in cases and under the procedure prescribed by law; provisional measures which the public security authorities may take "in exceptional cases of necessity and urgency", must be communicated to the judicial authorities within 48 hours and their validity must be confirmed by the latter within the following 48 hours.

The fourth paragraph of the same article provides that any physical or psychological violence against persons placed under some form of restriction of personal freedom shall be punished.

2. These constitutional principles are fully reflected in ordinary law. Thus, it is provided that, in the event of an arrest in flagrante delicto (Code of Criminal Procedure, art. 235 and 236), the police authorities shall, within 24 hours, place the detained person under the responsibility of the Public Prosecutor or the judge who has jurisdiction in the place where the offence was committed; in the event of the arrest of persons suspected of any offence (Code of Criminal Procedure, art. 238), the judicial authorities shall be immediately notified thereof; the grounds for this measure and any results already obtained in the course of the preliminary investigation shall also be communicated to them within 48 hours; arrests by the public security authorities (Decree-Law No. 625, art. 6, of 15 December 1979, incorporated with some amendments in Act No. 15 of 6 February 1980) shall be notified forthwith to the Public Prosecutor, to whom the grounds for the action taken shall also be communicated.

Furthermore, in all cases the measures taken by the police authorities lose their effect if the judicial authorities fail to confirm their validity within 96 hours of the time of arrest.

3. A further guarantee, particularly significant in this context because of the concern underlying resolution 13 (XXXIII), is furnished by the provisions of article 249 bis of the Code of Criminal Procedure, introduced through article 7 of the Act No. 932 of 5 December 1969.

This provision stipulates that, in the case of persons apprehended or arrested in flagrante delicto, the police authorities shall, without delay and with the consent of the person arrested or apprehended, notify the arrest to a member of that person's family. The provision, which clearly meets humanitarian considerations, thus guarantees that the members of the families concerned are informed of the action in respect of their relative taken by the police authorities.

4. The application of these principles is duly guaranteed by the existence of the relevant penalties.

Thus under article 606 of the Code of Criminal Procedure a police officer who, when making an arrest, abuses the powers inherent in his position is punishable by a term of imprisonment of up to three years.

Article 608 provides that a police officer who subjects an arrested or detained person in his charge to severe measures which are contrary to the law shall be punishable by a term of imprisonment of approximately 30 months.

Mention should be made, in conclusion, of the provision embodied in article 328 of the Code of Criminal Procedure. Under its terms, any unjustified omission, refusal or delay on the part of the police authorities or of the staff of a penal establishment (such as, for example, failure to observe the obligation to notify a member of the detained person's family of the arrest under article 249 bis of the Code of Criminal Procedure) is punishable by up to one year's imprisonment and by a fine of not more than 400,000 lire.

KUWAIT

[Original: Arabic]

[5 February 1981]

The first problem:

The adequacy of methods used at the domestic and international levels in searching for missing and disappeared persons and in undertaking speedy and impartial investigations.

In this connection, there is an obvious need to seek the views of the agencies responsible for search and investigation measures and to scrutinize the reports submitted by such agencies on this question. The study must also contain recommendations to States Members of the United Nations concerning the establishment of law enforcement agencies specializing in this important field of criminal research and consisting of adequate numbers of trained staff possessing a high degree of competence and absolute integrity. Such agencies must be provided with modern equipment and must use powerful weapons of deterrence and high quality means of transport and communication to help them to trace missing and disappeared persons and to liberate such persons where necessary, if it is established that their disappearance is the result of criminal acts.

In this context, we should not disregard the role of the International Criminal Police Organization as the authority entrusted with the task of skilfully and efficiently advising law enforcement agencies throughout the civilized world on the best way to control those patterns of behaviour which, in one way or another, might have as their objective the enforced disappearance of persons. Accordingly, that organization should be supported in its endeavours to urge the countries of the civilized world to co-operate in the adoption of appropriate methods to counter such illegal acts, which the penal codes of all countries condemn as heinous crimes. Suitable arrangements must be made to ensure an exchange of experience among Member States in the event of incidents involving involuntary disappearance with a view to the creation of a strong front to deal with such incidents.

The other problems for consideration, as listed under (b), (c), (d), and (e), generally relate to the adequacy of methods to ensure that law enforcement and security authorities and organizations are accountable for the discharge of their duties, procedures for detention without trial, the provision of protection for witnesses and journalists who furnish information, procedures for reporting cases of enforced disappearance in which the implicated authorities persist in their denials without conducting investigations or expressing willingness to conduct such investigations and inquiries, and, when such situations occur, procedures for the publication of findings relating to them.

The delicacy of such issues derives from the fact that any international measures taken in this respect might infringe the principle of the territorial sovereignty of States. In effect, the relationship between any State and individuals residing on its territory, irrespective of whether such individuals are its nationals or aliens, is governed by the national laws of the State and is in no way subject to general international law, since the regulation of that relationship, together with the rights and duties pertaining thereto, is one of the aspects of the territorial sovereignty of each individual State. However,

in keeping with the development of international trends and relations and with the increasing concern which general international law is showing for the individual, some restrictions have been imposed on the freedom of States with regard to the manner in which they treat persons subject to their jurisdiction, with a view to protecting such persons from possible tyrannical or arbitrary acts on the part of the public authorities in certain States. This protection applies to both nationals and aliens alike.

Accordingly, we propose that the study should include:

(a) Ways of inducing States Members of the United Nations to adapt their internal laws in a manner conducive to the solution of the above-mentioned problems and to acknowledge the principle of the responsibility of the State for excesses where there is incontrovertible evidence that such excesses are unjustified and might lead to enforced disappearances or other violations of human rights as defined in articles 2, 3, 5, 8, 9 and 13 of the Universal Declaration of Human Rights as follows:

1. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion.
2. Everyone has the right to life, liberty and security of person.
3. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
4. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights guaranteed him by the constitution or by law.
5. No one shall be subjected to arbitrary arrest, detention or exile.
6. Everyone has the right to freedom of movement and residence within the borders of each State and everyone has the right to leave any country, including his own, and to return to his country.

It should be noted that all these rights are guaranteed and stipulated in the Constitution of the State of Kuwait.

(b) An invitation to States of the civilized world to accede to an international convention or to draw up a binding covenant to regulate the above-mentioned situations, specifying their characteristics, the evidence acceptable in proof thereof and the procedures and methods which States undertake to adopt in order to deal with them within a context of international legality, including the possibility of resorting to international commissions of inquiry when necessary if a particular authority persists in denying an incident involving enforced disappearance on its territory, in spite of the existence of cogent proof refuting such claims, provided that such commissions are empowered to submit their conclusions for public discussion, in a spirit of reliance on international public opinion, with a view to the elimination of those distressing phenomena which threaten the most fundamental of human rights.

IV. REPLIES RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS
(continued) 2/

INTERNATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS

INTERNATIONAL COMMISSION OF JURISTS

INTERNATIONAL FEDERATION OF HUMAN RIGHTS

PAX ROMANA - INTERNATIONAL CATHOLIC MOVEMENT FOR
INTELLECTUAL AND CULTURAL AFFAIRS AND
INTERNATIONAL MOVEMENT OF CATHOLIC STUDENTS

[Original: French]

[12 February 1981]

The above-mentioned organizations wish to draw the attention of the Commission on Human Rights to a resolution unanimously adopted by the participants in a symposium on the policy of enforced disappearance of persons held on 31 January and 1 February 1981 at the Senate of the French Republic and at the National Assembly in Paris.

The symposium, which took place under the honorary chairmanship of Mr. Adolfo Pérez Esquivel, winner of the Nobel Peace Prize, was chaired successively by:

Mr. Maurice Aydalot, former First President of the Supreme Court of Appeal;

Mr. Louis-Edmond Pettiti, former President of the Paris Bar, Judge at the European Court of Human Rights, Strasbourg, Secretary-General of the International Movement of Catholic Lawyers;

Mr. Leopold Alsentin, barrister, representing Mr. Daniel Mayer, President of the International Federation of Human Rights;

Mr. Albert Zurfluh, former President of the International Union of Lawyers;

Mr. Niall Macdermot, Secretary-General of the International Commission of Jurists; and

Mr. Joe Nordman, President of the International Association of Democratic Lawyers.

The symposium was held in the presence, or with the participation, of many political and religious personalities and representatives of support committees and organizations of relatives of missing persons.

Mr. Alain Poher, President of the Senate of the French Republic;

Mr. Adolphe Chauvin, Senator, Vice-Chairman of the Joint Senatorial Group for the Defence of Human Rights; and

Mr. Philippe Machefer, Senator, member of the Joint Human Rights Group of the National Assembly and Vice-President of the National Assembly,

speaking on behalf of the Senate and the National Assembly, expressed the French Parliament's deep concern about the fate of missing persons and declared their support to the organizers of the symposium.

2/ See note 1 above.

In a message addressed to the chairman of the symposium, Mrs. Simone Weil, President of the European Parliament, stressed the meeting's importance and expressed her best wishes for its success, which would contribute towards the elimination of the practice of enforced disappearance.

The symposium adopted the following resolution.

"The symposium recommends that NGOs should transmit the following resolution to the competent international organizations and institutions, and in particular the United Nations, the International Labour Organisation, the European Parliament and the Council of Europe:

The symposium welcomes the work done by the United Nations Working Group on Enforced or Involuntary Disappearances, while at the same time regretting that the Working Group did not have sufficient time to conduct all the desired investigations;

Urgently requests the Commission on Human Rights to extend the mandate of the Working Group;

Also requests, in the light of experience acquired, that the mandate should be broadened, as follows:

- (I) As regards the rules of procedure, it requests that actions by the Chairman between sessions should be intensified and that the Group should exercise its powers of on-the-spot investigation, particularly in Chile, Bolivia, Argentina, Uruguay, Paraguay, Guatemala, El Salvador and Haiti, and in all other countries where allegations concerning the massive and recurrent nature of such practices have been made;
- (II) As regards the compilation of evidence, it requests that the extent to which States co-operate in furnishing evidence should be taken into account, and suggests that the presumption of the truth of the fact of disappearance should be deemed to be evidence:
 - (a) Either in the event of omission pure and simple on the part of the authorities as a result of their failure to reply in a particular case or of denials.
 - (b) Or in cases where it is apparent from the evidence submitted that the duty to search for a missing person has not been adequately complied with;

Requests that discussions in the Commission on Human Rights concerning enforced disappearances should continue to be conducted in public meetings not subject to any confidential procedure, so that the international community may be better informed;

Requests that the Commission on Human Rights should undertake studies in order that enforced disappearances may be designated crimes against humanity whenever they assume a massive and systematic character and are practised for a rational purpose, such as the elimination of political opponents, or whenever they can be classified as an administrative practice."

The final report of the symposium, submitted by Mr. Louis Joinet, a French judge, analyses the geopolitical, legal and moral context of enforced-disappearance policies, notes the limitations and shortcomings of the initiatives taken by Governments at the domestic level, and summarizes the responses to the problem contributed by the international community and international law. 3/

3/ This 19-page report is in the files of the Secretariat available for consultation.

WORLD PEACE COUNCIL

[Original: English]

[27 January 1981]

In January 1980, in a memorandum sent to the United Nations Human Rights Commission, the World Peace Council denounced the "institutionalized character" of the practice of disappearance of persons for political reasons, in several countries in Latin America.

In the past year the WPC has received constant denunciations by organizations, relatives and friends of persons missing for political reasons. We wish to call attention to the fact that this practice has continued in Argentina, Chile, El Salvador, Guatemala, Paraguay and Uruguay. This method of political repression varies from one country to another but - irrespective of the numbers involved, which also vary - in all these countries it represents a violation of most elementary human rights.

Arrest or kidnapping of persons by State bodies or others, which carry out their actions with complete impunity, subsequently, the authorities refuse to acknowledge that the persons affected have been detained. In some countries the corpses of missing persons are found abandoned, generally with signs of torture, in others the fate of these prisoners remains unknown, unless a secret cemetery is accidentally discovered.

It is suspected that missing persons are kept in prisons, concentration camps, police stations, their whereabouts however are always concealed. The relatives live under the terrible uncertainty of knowing nothing about them. There is a permanent pilgrimage, always unsuccessful, from police stations to military garrisons and authorities, presenting habeas corpus writs before the courts and leading always to frustration due to a justice which provides no hope.

This problem has reached the stage where conflicts have arisen and difficulties have been encountered in the interpretation of civil laws covering issues of presumed death or abandonment due to fortuitous circumstances, catastrophes or accidents, the prescribed laws which do not cover the cases of disappearances discussed here.

It has been proved that the "disappearance" of persons has become an international practice of political suppression. We pointed out last year that many Uruguayans have "disappeared" in Argentina and evidence has been established on the collaboration of the security services of these two countries and also between these and others. This has been repeatedly denounced as in the case of Chile. In particular, in August of last year, two Paraguayan citizens disappeared in Buenos Aires.

"No one shall be subjected to arbitrary arrests, detention or exile", state article 9 of the Universal Declaration of Human Rights, and other articles of the penal code. Persons who disappear for political reasons however are denied even those rights which are generally granted to the most dangerous criminals in the above-mentioned countries.

The World Peace Council would like to draw the attention of the United Nations Human Rights Commission to this hideous and inhuman practice affecting thousands of persons. World public opinion considers that no statute of limitation should apply to such crimes and that the investigations both into previous as well as into current cases should continue unremittingly.

To support our statement and supply further evidence we enclose a number of documents.

The WPC stresses the necessity of having these grave violations of human rights discussed by the United Nations Commission on Human Rights. It also urges that a Special Inquiry Commission be set up to investigate the cases on the spot and inform the world community of its findings.